IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 502 OF 2003

IN

SUMMARY SUIT NO. 547 OF 2002

Ashwin Kumar Sachdev .. Plaintiffs

versus

Brijmohan Vij .. Defendants

...

Mr.A.H. Gokhale i/b M.V. Kini for the plaintiff.

Mr.Suraj M. Shah for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 1st March 2005.

P.C.:

1. This Summons for Judgement is taken out by the plaintiff in a suit filed by him for recovery of the loan of Rs.23,00,000/- allegedly given by him to the defendant and interest thereon.

2. According to the plaintiff, he advanced to the

defendant a sum of Rs.23,00,000/- by issuane of a pay order dated 7th April 1999 drawn by Bank International Indonesia. The plaintiff issued the notice for repayment on 18th October 2001 but the defendant failed and neglected to pay. Hence, plaintiff has filed this suit for recovery.

3. By filing an affidavit in reply, the defendant has denied that it ever took loan of Rs.23,00,000/- or any other loan from the plaintiff. He contends that the pay order of Rs.23,00,000/- dated 7th April 1999 was not issued by the plaintiff or at the instance of the plaintiff. He contends that the defendant's sister stays in Singapore and she had sent in all the sum of Rs.29,00,000/- to the defendant and this pay order of Rs.23,00,000/- is a part of the sum of Rs.29,99,999/- sent by defendant's sister to him.

4. At the earliest opportunity of the receipt of the suit notice dated 18th October 2001, the defendant sent a reply denying that a sum of Rs.23,00,000/- was advanced by the plaintiff to him. A copy of the said reply is annexed at Exhibit-C of the plaint. Despite specific contention of the

defendant in the reply to the notice that sum of Rs.23,00,000/- was not advanced by the plaintiff but was sent by defendant's sister, the plaintiff has produced no evidence to show that a sum of Rs.23,00,000/- was sent by him. The plaintiff could have easily obtained a certificate from the Bank International Indonesia to show at whose instance the pay order of Rs.23,00,000/- was issued by the Bank and who had made the payment for issuance of the pay order.

5. For these reasons, it cannot be said that the defence that the defendant has raised is sham and fictitious. If it is proved at the trial that the sum of Rs.23,00,000/- was not advanced by the plaintiff but was paid to the defendant by his sister, the suit would have to be dismissed. In such circumstances, the defendant would have to be granted unconditional leave to defend the suit.

6. The defendant is granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of one month.

D.G. KARNIK, J